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No. 82-299

In the Supreme Court of the United States

OCTOBER TERM, 1982

METROPOLITAN LIFE INSURANCE COMPANY, APPELLANT

v.

COMMONWEALTH OF MASSACHUSETTS

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

REPLY BRIEF FOR APPELLANT

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1. Massachusetts concedes (Motion to Affirm 11) that ERISA contemplates "broad preemption" of state laws that relate to employee benefit plans. Moreover, the Commonwealth does not dispute that Section 47B is such a law. Nevertheless, Massachusetts contends that ERISA does not preempt Section 47B.

The Commonwealth begins with the proposition that, notwithstanding ERISA's comprehensive language, a court should find preemption only when Congress has "unmistakably ordained" the preemption of a particular statute (Motion to Affirm 8, 10, 11). The Commonwealth then argues (*id.* at 14-17) that no such "unmistakable" intent to preempt state law can be found here, because Section 47B affects the substantive content of insured employee benefit plans and ERISA itself does not purport to regulate the substantive content of such plans. Massachusetts therefore maintains that Section 47B's "intrusion" on ERISA plans is "outside the parameters of 'exclusive federal concern' " (*id.* at 15) and that the state law, for that reason, is not preempted.

Although not so extreme, the rationale of the court below is similar. In support of its decision that the ERISA preemption clause is inapplicable to Section 47B, the Supreme Judicial Court explained that Congress enacted ERISA primarily to correct widespread abuses in the administration of employee benefit plans and that "Section 47B has no bearing on the problem of administrative abuse, and does not overlap or interfere with the means chosen by Congress to deal with such abuse" (J.S. App. 10a). Because of this, the court "resolve[d] the tension between the general preemption clause and the savings clause" by finding no preemption.

These approaches to ERISA preemption are far too restrictive. They ignore Congress' deliberate choice of an unusually broad preemption provision, a provision designed to avoid disputes concerning whether particular state laws do or do not conflict with ERISA's regulatory program. See, in addition to the cases cited in appellant's jurisdictional statement (at 8-9), *Hotel and Restaurant Employees and Bartenders International Union 54* v. *Danzinger*, 536 F. Supp. 317, 333 (D. N.J. 1982) ("The language used by Congress to establish the preemptive effect of ERISA is more comprehensive than Congress usually employs"); *Monsanto Co.* v. *Ford*, 534 F. Supp. 51, 53 (E.D. Mo. 1981) ("The broad scope of the language [in] § 1144 indicates a congressional intent to preempt the entire field of law involving employee benefits subject to ERISA").

Massachusetts' argument and the holding below are simply contrary to the history and purpose of ERISA's preemption provision, and they are contrary to the several cases that have found preemption of state laws that relate to employee benefit plans but that address matters not specifically regulated by ERISA. See, *e.g.*, *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981); *Standard Oil Co.* v. *Agsalud*, 442 F. Supp. 695, 706-707 (N.D. Calif. 1977), aff'd, 633 F.2d 760 (9th Cir. 1980), aff'd, 102 S. Ct. 79 (1981). The point is that Congress has

occupied the field, and preemption does not depend on whether a particular state law concerns a matter on which Congress has actually legislated.

2. The Commonwealth's attempted distinction of *Alessi* is unavailing. In an effort to reconcile *Alessi* with its argument that ERISA preemption applies only to substantive areas explicitly regulated by ERISA, Massachusetts asserts (Motion to Affirm 15) that *Alessi* concerned "a state law which prohibited a practice, 'set off', which ERISA permits." In the Commonwealth's view, Section 47B, unlike the state law at issue in *Alessi*, "does not purport to do something ERISA forbids" (*id.* at 16). In fact, of course, ERISA did not and does not "forbid" the substance of the New Jersey law at issue in *Alessi;* ERISA did not and does not affirmatively "permit" the set-off procedures prohibited by the New Jersey law. Rather, ERISA and its legislative history are silent on the question whether workers' compensation benefits may be "set off" against employees' pension benefits (see 451 U.S. at 517). This Court invalidated the state law in *Alessi*, not because it conflicted with one of ERISA's regulatory provisions, but because it related to employee benefit plans and therefore was preempted by ERISA's Section 514(a).

In *Alessi*, as in this case, ERISA was silent on the subject of the disputed state law. That silence, however, did not and does not resolve the preemption question. Section 514(a) of ERISA extends considerably beyond the specific areas in which Congress has chosen to impose federal rules and regulations. It covers all state laws "that relate to any employee benefit plan." If the Commonwealth were correct that ERISA preemption extends only to substantive matters actually regulated by ERISA, then Section 47B would not be preempted at all and could be applied, as the Massachusetts legislature intended, directly to employee benefit plans, not merely to health insurance policies purchased by such plans. Even the Commonwealth concedes that such direct state regulation of the substan-

tive content of employee benefit plans is preempted by Section 514(a).

3. The Commonwealth relies on a trial court finding, endorsed by the Massachusetts appellate court (J.S. App. 12a, 42a), that compliance with state mandated benefit laws would be no more "complex or burdensome" than compliance with "various other diverse multi-state regulatory schemes such as workmen's compensation laws." On this basis, the Commonwealth apparently contends that ERISA preemption of Section 47B is not required.

Of course, the cost and administrative burden imposed by state laws are not, by the terms of Section 514(a) of ERISA, the sole factors that determine whether such laws are preempted by the federal statute.* More important, the trial court's finding, entered in October 1980, before *Alessi* was decided, erroneously assumes that "multi-state regulatory schemes such as workmen's compensation laws" are always compatible with ERISA. In fact, as *Alessi* shows and as the Second Circuit's decision in *Delta Air Lines, Inc.* v. *Kramarsky*, 666 F.2d 21 (1981), prob. jur. noted, No. 81-1578 (Apr. 19, 1982), confirms, state workers' compensation laws may well be preempted by ERISA to the extent that such laws "relate to any employee benefit plan."

4. In the final analysis, the Commonwealth's position depends entirely on ERISA's "savings clause" for state

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* Mandatory benefit statutes can only serve to increase premium and administrative costs. That point is self-evident. In addition, however, unimpeached testimony concerning the magnitude of such cost increases was given at trial by management and labor representatives responsible for administering both large and small ERISA plans. This testimony was simply ignored by the courts below. See also *Metropolitan Life Insurance Company* v. *Insurance Commissioner*, 441 A.2d 1098, 1104 (Md. Ct. Spec. App. 1982) ("uncontradicted" testimony showed that state statute similar to Section 47B would have "drastic" effect on ERISA plan, "adversely affecting to a substantial degree, costs, administration, uniformity of benefits, processing and payment of claims, and appeal procedures on denial of them").

insurance regulation. 29 U.S.C. 1144(b)(2)(A). Massachusetts argues bluntly that Section 47B is an insurance law and ERISA preemption does not apply to state laws that regulate insurance (Motion to Affirm 12). Even now, the Commonwealth does not suggest the slightest limitation on this argument. In Massachusetts' view, each state is apparently free to prescribe in detail the complete contents of all health insurance policies covering state residents and then to apply such prescriptions, on a mandatory basis, to ERISA plans. Such state dictation of the substantive benefits to be provided by insured ERISA plans is inconsistent with the broad preemption established by Section 514(a).

Moreover, as the Commonwealth candidly acknowledges (*id.* at 12 n.7), its simplistic contention was not accepted by the Massachusetts Supreme Judicial Court. That court announced that it "prefer[red] to resolve the tension between the general preemption clause and the savings clause by reference to the policies and operation of ERISA" (J.S. App. 10a). The court was most influenced by the fact that "Section 47B affects only the substantive content of plans—a subject completely untouched by ERISA's regulatory provisions" (*ibid.*).

Review by this Court is needed not merely to decide the validity of a particular state law but more generally to establish the appropriate interaction between ERISA's preemption provision and the statute's savings clause for insurance regulation. Both for future litigation and for future action by state legislatures, it makes a great deal of difference (a) whether any state law that purports to regulate insurance is immune from ERISA preemption, as the Commonwealth contends, or (b) whether the scope of preemption and the applicability of the savings clause depend on the substantive regulatory provisions of ERISA itself, as the Massachusetts court held, or (c) whether the states, although continuing to have authority in traditional areas of insurance regulation, are preempted

from extending that authority to regulate the content of ERISA plans, as appellant argues.

Contrary to the Commonwealth's suggestion (Motion to Affirm 6 n.5), the state courts are divided concerning the interaction between ERISA's preemption provision and its savings clause for insurance regulation. A Maryland appellate court has recently invalidated a state mandated benefit statute similar to Section 47B. The court held that the state law was an impermissible attempt to regulate indirectly the content of ERISA plans. *Metropolitan Life Insurance Company* v. *Insurance Commissioner*, 441 A.2d 1098 (Md. Ct. Spec. App. 1982). State and lower federal courts are also divided concerning the breadth of ERISA's preemption clause. Compare, *e.g.*, *Gast* v. *State*, 36 Or. App. 441, 585 P.2d 12 (Or. Ct. App. 1978), with *Hewlett-Packard Co.* v. *Barnes*, 425 F. Supp. 1294 (N.D. Calif. 1977), aff'd, 571 F.2d 502 (9th Cir.), cert. denied, 439 U.S. 831 (1978).

Intervention by this Court is necessary to resolve these disagreements and to provide guidance to insurers, employers, employees, and state legislatures regarding the extent to which the states may dictate the content of ERISA plans in the guise of insurance regulation.

For these reasons, and the reasons outlined in appellant's jurisdictional statement, probable jurisdiction should be noted.

Respectfully submitted,

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